Supreme Court, U.S.
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No. 95-799

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

ELIJAH W. RATCLIFF
PETITIONER

V.

THE STATE BAR OF TEXAS
RESPONDENT

On Petition for Writ of Mandamus
To The
Supreme Court of Texas

BRIEF OF RESPONDENT

Respectfully submitted,

Linda A. Acevedo
Assistant General Counsel
Office of the General Counsel
STATE BAR OF TEXAS
P.O. Box 12487
Austin, Texas 78711-2487
512/463-1463

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STATEMENT OF THE CASE

Petitioner, Elijah W. Ratcliff, initially brought suit in the District Court of Travis County, Texas against the Texas Employment Commission seeking to set aside employment taxes. During the course of the proceedings, Ratcliff amended his suit to add several other defendants including the State Bar of Texas and Karen Johnson, Executive Director of the State Bar of Texas. The allegations against the State Bar and Mrs. Johnson were vague and unspecified but appeared to stem from Ratcliff's disbarment from the practice of law on February 28, 1974.

The trial court granted a plea to the jurisdiction on behalf of the State Bar of Texas and Karen Johnson and dismissed Ratcliff's Third Amended Petition with prejudice.

Ratcliff appealed the Order to the Court of Appeals for the Third District of Texas. On October 11, 1995, the Court of Appeals affirmed the trial court's judgment. The opinion of the court of appeals correctly states the nature and result of the suit.

Ratcliff has filed an application for writ of error with the Texas Supreme Court and such application is currently pending before the Supreme Court of Texas. (Case No. 95-1232).

Ratcliff now seeks a writ of mandamus against a state district judge regarding the Order granting the plea to the jurisdiction. This response is filed on behalf of the State Bar of Texas and Karen Johnson.

STATEMENT OF THE FACTS

Petitioner, Elijah W. Ratcliff, initially brought this action in the District Court of Travis County, Texas against the Texas Employment Commission seeking to set aside employment taxes. Ratcliff amended his petition to include the State Bar of Texas as a defendant. The Suit sought monetary damages and equitable relief against the State Bar for unspecified acts against Ratcliff.

The State Bar of Texas filed special exceptions to the First Amended Petition excepting to the petition on the basis that 1) it alleged that the State Bar of Texas was an agency of the State of Texas; 2) for failing to state a cause of action and failing to give fair notice of what it must defend; 3) for failing to specify the allegations of activities and misconduct; 4) for failing to establish standing to sue

the State Bar; and 5) for failing to specify the amount of damages sought.

After a hearing, the trial court granted the State Bar's special exceptions and ordered Ratcliff to amend his petition. Ratcliff filed a Second Amended Petition but failed to correct the defects set forth in the State Bar's special exceptions. Instead, Ratcliff recounts a litany of perceived injustices associated with a criminal conviction obtained against him, with his disbarment from the practice of law in 1974, and his inability to obtain reinstatement over the last twenty (20) years.

Consequently, the State Bar filed special exceptions to the second amended petition. After a hearing, the trial court granted the Bar's special exceptions and Ratcliff was specifically ordered to amend particular portions of the petition within thirty

(30) days of the hearing.

Between the date of the hearing and the signing of the Order by the trial court, Ratcliff amended his petition again and added as a defendant Karen Johnson, the Executive Director of the State Bar of Texas. No significant changes were made to this latest pleading nor were any changes made to the portions of the petition specifically ordered by the trial court to be amended.

Thereafter, the State Bar of Texas and Karen Johnson filed a Plea to the Jurisdiction. After a hearing, the plea to the jurisdiction was granted and Ratcliff's Third Amended Original Petition was dismissed with prejudice. The trial court also noted that Ratcliff had failed to follow the Court's order pertaining to the State Bar's special exceptions. Because there was some confusion as to the finality

of this Order, the State Bar sought clarification and a subsequent Order dismissing Ratcliff's claims was entered.

OBJECTION TO JURISDICTION

Petitioner, Ratcliff asserts jurisdiction of this Court pursuant to 28 U.S.C. §1651(a), i.e., by writ of mandamus. However, Ratcliff has failed to establish jurisdiction pursuant to Rule 20.1 of the Rules of Supreme Court of the United States. No cases are pending in any federal court and thus this writ is not in aid of the Court's appellate jurisdiction. Further, petitioner's case is pending in the Texas Supreme Court where adequate relief can be obtained and thus the case is not ripe for review. Therefore, the petition should be denied for lack of jurisdiction.

ARGUMENT

The Supreme Court lacks jurisdiction to issue a writ of mandamus.

Ratcliff continues in his attempt to collaterally attack his state court judgment of his 1974 disbarment. Federal courts do not have subject matter jurisdiction over these types of challenges. *Musslewhite v. State Bar of Texas*, 32 F.3d 942, 945 (5th Cir. 1994); *Liedtke v. State Bar of Texas*, 18 F.3d 315 (5th Cir. 1994).

In addition, Supreme Court jurisdiction is justified to control state court action by using extraordinary writs **only when the litigation is prospectively within the Court's appellate jurisdiction.** See *United States v. Harper*, 729 F.2d 1216, 1221 (9th Cir. 1984); *Gulfstream Aerospace Corp. V. Mayacamas Corp.*, 108 S.Ct.1133 (1988).